

Input from the AESAG working group on governance for the governance guideline for single price coupling and single intra-day market

EFET comments – 29 June 2012



The European Federation of Energy Traders (EFET)¹ welcomes the opportunity to comment on the input from the AESAG governance working group on the governance guideline for single price coupling and single intra-day market. While we acknowledge the efforts of the EU Commission and AESAG in putting together this guideline, this EFET document seeks to clarify a number of points where we think the governance guidelines could point the way to a customer-oriented market coupling based on an “open market infrastructure”.

You will find EFET comments and suggestions in red in the body of the original text. Contentious elements of the original text are highlighted in yellow.



Preambles

[for later]

Definitions

[to be fully co-ordinated with definitions in the capacity allocation and congestion management network code]

'TSO' = transmission system operator as in Directive 2009/72/EC

'day-ahead spot market' = trading facility which collects energy bids from wholesale market participants and matches them using single auction into contracts to deliver electricity over the next day

EFET suggests: throughout to use the terminology “bids and offers”, or “bids to buy and sell”, in order to clarify that a two-sided auction is implied

¹ EFET is an industry association which was set up in order to improve the conditions of energy trading in Europe, mainly in electricity and gas markets. Established in 1999, EFET represents today over 100 companies in 27 European countries. EFET works to promote and facilitate European energy trading in an open, transparent market unhindered by national borders.

'single price coupling' = coordinated electricity price setting and cross-zonal capacity allocation mechanism performing simultaneously with matching energy orders, using bids of the day-ahead spot markets per bidding zone and capacities between bidding zones.

'single intra-day market' = trading and cross-zonal capacity allocation facility which collects energy bids per bidding zone from wholesale market participants and matches them continuously into contracts to deliver electricity, once the day-ahead spot market has taken place

'market operator' = entity operating a day-ahead spot market or a continuous intra-day market, additionally, the same entity may operate a local auction intra-day market

EFET suggests: to delete mention of the local auction intraday market. Although this might be the case, it shouldn't be encouraged and it is not really necessary to say that a market operator may do something in what will be an Annex to a Regulation.

'bidding zone' = the smallest geographical area for which one single clearing price in the day-ahead spot market is applicable

EFET suggests: to also clarify that bidding zone should also be the relevant area for intraday trading (although prices may change during the day) and also for imbalance prices. This is crucial as all market participants should be trading to avoid imbalance payments.

During the consultation on the NC CACM we have proposed the following definition: "A geographical area within which market participants trade freely OTC or exchange products and are able to schedule (physically settle) those trades without implicit or explicit capacity allocation (booking)."

'NEMO' = Nominated Electricity Market Operator, whose roles and responsibilities and tasks are described in [reference]

EFET suggests: 'NEMO' = a Nominated Electricity Market Operator **is an "appointed" or "designated" market operator whose** roles and responsibilities and tasks are described in [reference]

'MCO' = Market Coupling Operator, whose functions are described in [reference]

EFET suggests: 'MCO' = Market Coupling Operator, **whose** functions are described in [reference]

Objective and scope

The objective of this guideline is to establish a robust, reliable and non-discriminatory European Union governance framework for a European single price coupling and for a European single intra-day market through a legally binding guideline which strives for a high level of harmonisation of local single price coupling and single intra-day market governance arrangements including the relation between TSOs and Market Operators. This shall include particularly definitions and descriptions on the relationship between involved entities, cooperation and decision making structures, definitions of tasks and

responsibilities including liability, cost allocation and regulatory oversight. The guideline takes also into account the different legal statuses and situations of market operators in different Member States.

Evolvement of single price coupling and single intra-day market

Preferably implementation of the European single price coupling and the European intra-day market may initially develop in appropriate regional initiatives, which shall in all cases ensure compatibility with and lead to a single price coupling and single intra-day market system implemented at a European level. **Single price coupling and single intra-day market shall as far as possible make use of existing market operators.**

EFET suggests: Single price coupling and single intra-day market shall as far as possible make use of services from existing market operators, but new ones shall not be excluded to join, neither from new markets joining the algorithm, neither from existing markets where market operators start up their services.

In case the cooperation and implementation process via the designation processes and the cooperation structures described in the guideline do not provide **for an implementation** by 30 June 2014, the European Commission in cooperation with ACER shall create or appoint a single regulated entity to perform the common functions of single price coupling and single intra-day market based on a tendering process as defined in [reference].

EFET suggests: In case the cooperation and implementation process via the designation processes and the cooperation structures described in the guideline do not provide for an implementation of a single price coupling and a single intra-day market for all markets in the EU where DA market coupling already exists by 30 June 2014, the European Commission in cooperation with ACER shall create or appoint a single regulated entity to perform the common functions of single price coupling and single intra-day market based on a tendering process as defined in [reference].

The Member States which do not have yet **the necessary market conditions** for participating in the single price coupling and single intra-day market shall develop the market conditions in order to participate **as soon as possible**.

EFET comment: The guideline should be more explicit on the necessary market conditions for participating in the single price coupling and single intraday market. In addition, the guideline should explicit whether or not the necessary market conditions are similar for the day ahead and the intraday market.

The guideline should set a **firm timeline** that is **objectively measurable** for the development of the necessary market conditions for participating in the single price coupling and single intraday market. The fact that the necessary market conditions are not present in certain Member States should not grant these Member States with the possibility to slow down the single price coupling and single intraday market thanks to an obligation without a deadline. The guideline could for instance foresee a deadline at the latest 6 months after the establishment of a power exchange for day ahead, and no later than 31 December 2014.

In addition, this is not just about the existence of a PX. It is also about a compatible PX i.e. a voluntary market not compulsory (e.g not like OMEL), a two-sided market where supply and demand face the same price (e.g. not like GME/SEM), a market with free price formation (no caps etc.) where market participants can bid and offer as they choose and are not forced into e.g. complex bidding.

A bidding zone shall join single price coupling and single intra-day market once the following participation criteria are fulfilled:

EFET suggests: A bidding zone **will be in a position to join** single price coupling and single intra-day market once the following participation criteria are fulfilled:

- a) Cross-zonal capacity to another eligible bidding zone in Europe exists,
- b) The Member State has designated at least one Nominated Electricity Market Operator, hereinafter NEMO,
- c) The NEMOs and TSOs have entered in appropriate arrangements defined under [reference] for operating the single price coupling and single intra-day market in the bidding zone,

EFET suggests:

- c) The NEMOs and TSOs **of all involved bidding zones to the market coupling, and other involved parties like MCOs**, have entered in appropriate **multilateral** arrangements defined under [reference] for operating the single price coupling and single intra-day market in the bidding zone.

The rights and responsibilities of **new** NEMOs and TSOs shall be fair and non-discriminatory and consistent with the functioning of the single price coupling and single intra-day market system implemented at the European level.

EFET suggests: Add a first sentence and modify the second one: **At any moment, new market operators can apply to become NEMO.** The rights and responsibilities of **existing and new** NEMOs and TSOs shall be fair and non-discriminatory and consistent with the functioning of the single price coupling and single intra-day market system implemented at the European level.

NEMOs, designation and de-designation

For the purpose of efficient implicit cross-zonal capacity allocation, all Member States electrically connected to another eligible bidding zone in another Member State shall ensure that one or more NEMOs, covering jointly in all required functions the whole territory of the Member State, participate in the single price coupling and the single intra-day market. When designating the entities the fulfilment of the tasks defined in [reference to NEMO tasks and MCO functions] in a coordinated manner has to be ensured. Designation of NEMOs shall be for **a period of time to be determined by the Member States** having regard to considerations of economic efficiency, competition and

liquidity. After NEMO designation, a reasonable preparatory period shall be allowed for NEMO to become fully operational.

EFET comment: EFET notes that Member States should commit to maintain at least one NEMO for continuity on their territory, in order to ensure continuity.

Also designation should involve consultation with market participants. EFET view is that PXs should be trading venues that are initiated and used by the market on a voluntary basis due to the convenience they offer. If a majority of market participants, for example, wanted to migrate from one platform to another, this might be a factor in the designation process.

If there are no suitable organisations in a Member State to be nominated as a NEMO, then the Member State shall foresee national measures for the establishment of such operators, or make arrangements which allow for NEMOs in other Member States to perform the necessary single price coupling and single intra-day market functions in their bidding zones.

In cases where more than one NEMO is designated within in one Member State, the applicable designation criteria and operational arrangements shall ensure that competition between NEMOs is organized in a fair and non-discriminatory manner, in particular with respect to the no-preferential status to the national designation process and prevention of free-riding strategies between NEMOs exploiting the pooling of liquidity within the same single price coupling and single intra-day market mechanism.

EFET comment: The last part of the sentence highlighted in yellow should be deleted, as this criterion is not acceptable from a competition viewpoint: each market operator should have the right to apply to be a NEMO, independent of the liquidity status of other NEMOs.

NRA shall ensure monitoring of compliance of the NEMOs with the designation criteria [reference]. A Member State shall revoke the designation where the market operator fails to maintain compliance with the criteria and is not able to restore compliance in a period of six months from the notification of the failure to the NEMO by the NRA.

The designation and de-designation of NEMOs shall be notified to the European Commission and published in the Official Journal of the European Union.

EFET suggests: The designation and de-designation of NEMOs shall be notified to the European Commission and published in the Official Journal of the European Union, **and an overview of the status (including the name of the operator, applying or nominated, term of nomination) of NEMOs shall be published on ACER website.**

NEMO Designation Criteria

NEMOs shall fulfil the following designation criteria:

- a) The market operators shall have or contract adequate resources for a common, coordinated and compliant operation of a single spot market and a single intra-day market, including fulfilment of the MCO functions, financial resources, necessary information technology, technical infrastructure and operational procedures or provide necessary proof that they are able to create these prerequisites within a reasonable preparatory period.

EFET suggests:

- a) The market operators shall have or contract adequate resources for a common, coordinated and compliant operation of a single spot market and a single intra-day market, including fulfilment of the MCO functions **unless this function is (contractually) delegated to another market operator**, financial resources, necessary information technology, technical infrastructure and operational procedures or provide necessary proof that they are able to create these prerequisites within a reasonable preparatory period.
- b) The market operators shall promote and maintain high standards of integrity and fair dealing in the conduct of business by ensuring that the participants have equally open access to relevant information, that the business is conducted in an orderly manner and appropriate measures are adopted to prevent abuse of the market including abuse of market power, facilitate its detection and monitor its incidence.

EFET suggests: delete the text after “orderly manner”. It should not necessarily be the job of an exchange to police market abuses or to do the job of a competition authority. In general we need to get away from the idea of pro-active, *ex-ante* action against potential but theoretical abuses. The market will never work if we take this approach.

- c) The market operators shall be cost-efficient.
- d) The market operators shall have appropriate independence from market participants, they shall treat all market participants in a non-discriminatory way and the market surveillance at the market operator shall be appropriate.
- e) The market operators shall have non-discriminatory bid collection and appropriate transparency and confidentiality agreements with market participants and the TSOs.
- f) The market operators shall have provision of the necessary clearing services.

EFET comment: A number of concepts are unclear and should be defined in a stricter manner, including “cost-efficient”, “appropriate”, and “necessary”. The terms “provision” should specify whether it refers to financial provision or otherwise. It’s not totally appropriate to talk about cost efficiency of a commercially provided service.

EFET suggests: Add another point:

- g) **The market operators should be customer oriented, and capable and willing to introduce new products to fulfil market participants’ needs.**

NEMOs' roles and responsibilities

The NEMOs shall be responsible for the following functions regarding single price coupling and single intra-day market:

- a) Operate local markets including receiving electricity bids from market participants, overall responsibility **for matching bids** in accordance with the single price coupling and single intra-day market results, publish prices and settle and clear the contracts according to relevant participant agreements and regulations,

EFET comment: The NEMO should not match the bids, but only accept the bids via the single day ahead and intraday mechanism.

- b) Establish NEMO market requirements for the single price coupling and single intra-day market coordinated matching function and algorithm for all aspects related to electricity market functioning,

EFET comment: We are uncertain why NEMOs should set specific market requirements for each market. Also, a process for this is discussed already in the CACM NC.

- c) Establish together with other NEMOs **one or several MCOs** to perform the MCO functions defined in [reference], having regard to considerations of economic efficiency and liquidity,[does several MCOs apply also for intra-day?]

EFET suggests: Modify point c (For a single day ahead and intraday market, there is no need to have more than one MCO. However, the MCO function could be performed in a “master/slave” model or be shared by more than one NEMO, in order to ensure redundancy and robustness):

- c) Establish together with other NEMOs **a MCO** to perform the MCO functions defined in [reference], having regard to considerations of economic efficiency and liquidity,
- d) Send received bid information to MCOs,
- e) Check and validate the results calculated by the MCOs and make them as final results in case they are considered correct and take responsibility for them,

EFET suggests: Modify point e (the results should only be calculated once and then used by the NEMO, there is no reason why a NEMO should be allowed to question again the outcome of MCO):

- e) **Accept** the results calculated by the MCOs and make them as final results and take responsibility for them,
- f) Publish the market results including prices and bidding area net positions,
- g) **Clear and settle the commercial cross-zonal transactions resulting from the single price coupling and intra-day market, including collecting and forwarding the congestion rents to the TSOs,**

EFET comment: This process becomes difficult if there is more than one NEMO in a bidding zone. However, it can be solved by arrangements between NEMOs and TSOs.

- h) Implement and operate backup procedures for local market operation, consistent with overall procedures, if no European results are available from the MCOs,
- i) Comply with the relevant single price coupling and single intra-day market rules and procedures,

EFET suggests: add a reference to the CACM NC here (and elsewhere where appropriate).

- j) provide input to the committees established under [reference] supporting the governance and decision making on single price coupling and single intra-day market, and
- k) provide the single price coupling and single intra-day market cost information to NRAs according to [reference] and to TSOs where NEMO or MCO costs are to be covered by contribution of TSOs.

EFET comment: Add another point:

- l) Consult market participants on the products offered for day ahead and intraday markets and prepare with other NEMOs the implementation of new products serving market needs and endorsed by accredited representatives of market participants in the stakeholder committee.**

MCO functions

The MCOs shall have the following responsibilities:

- a) Develop and maintain together with other MCOs the algorithms, systems and procedures for MCO functions in compliance with the agreed market and capacity allocation requirements for the single price coupling and the single intra-day market,
EFET comment: there should only be one MCO for all Europe or a master\slave arrangement if a single body dealing with all regions proves impracticable.
- b) receive bid information from NEMOs,
- c) receive parameters for ATC or flow-based capacity allocation,
- d) operate the single price coupling and the single intra-day coupling,
- e) validate and sending relevant single price coupling and single intra-day market results to the NEMOs,

EFET comment: Add another point:

- f) Gather, pass to aggregators/ repository service providers and/or disclose direct to regulators and/or publish transaction data of a type stipulated in REMIT after consultation with TSOs and representatives of market participants in the stakeholder committee,**

- g) Provide input to the committees established under [reference] supporting the governance and decision making on single price coupling and single intra-day market.

EFET comment: Add another point:

h) Consult market participants on the products offered for day ahead and intraday markets and prepare with other NEMOs the implementation of new products approved by representatives of market participants in the stakeholder committee.

If NEMOs fail to establish the MCOs for single price coupling and single intra-day market for either the intraday or the day-ahead timeframe, the European Commission may decide ENTSO-E, to create or appoint a single regulated entity to which the functions of the MCOs for the single price coupling or for intra-day market will be assigned. ACER shall evaluate the progress by NEMOs in establishing the MCOs, in particular regarding the contractual and regulatory framework and regarding the technical preparedness to fulfil the MCO functions. ACER shall make a recommendation latest by 30 June 2014, whether the European Commission shall decide ENTSO-E to proceed in procuring the MCO function. Detailed appointment and selection criteria shall be provided by ENTSO-E and subject to an ACER opinion.

EFET question:

What legal instrument will the Commission use to direct ENTSO-E? A Commission Decision?

EFET suggests: rephrase the paragraph:

If NEMOs fail to establish the MCOs for single price coupling and single intra-day market for either the intraday or the day-ahead timeframe, the European Commission may **call upon** ENTSO-E to create or appoint a single regulated entity, to which the functions of the MCOs for the single price coupling or for intra-day market will be assigned. ACER shall evaluate the progress by NEMOs in establishing the MCOs, in particular regarding the contractual and regulatory framework and regarding the technical preparedness to fulfil the MCO functions. ACER shall make a recommendation latest by 30 June 2014, whether the European Commission shall **designate** ENTSO-E to proceed in procuring the MCO function. Detailed appointment and selection criteria shall be **put forward** by ENTSO-E and **adopted** subject to an ACER opinion.

TSOs' roles and responsibilities

The TSOs shall be responsible for the following functions regarding single price coupling and single intra-day market.

- a) In cooperation with NEMOs, establish TSO requirements for the single price coupling and single intra-day market algorithm for all aspects related to capacity allocation, **system security, security of supply and economic surplus maximisation,**

EFET comment: The last part of the sentence highlighted in yellow should be deleted, as system security and security of supply have to be ensured via the capacity calculation process and the capacity parameters proposed to MCOs, and economic surplus maximisation is defined in the CACM Framework Guidelines and Network Code(s).

- b) Validate the algorithm against above-mentioned requirements,

EFET suggests: Modify point b):

- b) Validate the algorithm against above-mentioned requirements, **and duly respecting applicable ATC or flow-based capacity calculation parameters**
- c) Define and send parameters for ATC or flow-based capacity allocation to MCOs,
d) Validate price coupling results in terms of capacity allocation,

EFET comment: We are unsure why this element is included. Please provide a rationale why TSOs should validate price coupling results, even when cross-border parameters are not being violated.

- e) Where required, calculate and publish commercial cross-zonal exchanges on borders between bidding zones,

EFET suggests: Delete point e): EFET opposes compulsion of reporting channels and publication platforms as a matter of principle, whether applied to generators, market operators or TSOs. Primary disclosure and publication obligations should be dealt with only under REMIT or within Transparency Guidelines. Thus items e) and g) should disappear

- f) Operate the transmission system according to the commercial cross-zonal exchanges resulting from single price coupling and single intra-day market,

EFET suggests: Modify point f):

- f) Operate the transmission system **respecting the commercial cross-zonal transactions and corresponding nominations or utilisation factors** resulting from single price coupling and **continuous trading in the** single intra-day market,
- g) Publish and make available relevant data in a common platform,

EFET suggests: Delete point g): EFET opposes compulsion of reporting channels and publication platforms as a matter of principle, whether applied to generators, market operators or TSOs. Primary disclosure and publication obligations should be dealt with only under REMIT or within Transparency Guidelines. Thus items e) and g) should disappear.

- h) Establish and operate, decoupling and fall-back procedures for capacity allocation if no European results are available from the MCOs before a predefined deadline,
i) Establish TSO requirements for collection and distribution of congestion income, and
j) Provide input to the committees established under [reference] supporting the governance and decision making on single price coupling and single intra-day market.

EFET suggests: Delete point h), i), and j): The matters specified in h) to j) are already covered in the CACM FG and/or the draft CACM NC.

Rules regarding the single intra-day market

The following provisions are not applicable for the single intra-day market [list of provisions if any].

Cost sharing principles

Costs for establishing and performing the NEMO and TSO tasks and MCO functions directly related to single price coupling and single intra-day market shall be clearly separated from costs of other activities using separate accounts. This accounting structure shall be for NRA approval. NEMOs, MCOs and TSOs shall provide a yearly reporting to NRAs in which the initial costs for establishing the single price coupling and single intra-day market, costs for amending the single price coupling and single intra-day market and operating costs are shown and explained in detail.

EFET suggests: Add a last sentence to the paragraph: **The approved accounting results per NEMO/TSO/MCO shall be published on the ACER website.**

Costs shall be distinguished in common costs for the overall establishment of the European single price coupling and single intra-day market and national implementation costs for national participation in the European single price coupling and single intra-day market. Common costs shall be assessed by NRAs. NRAs shall provide a coordinated summary on whether the common costs of the coupling can be considered to be efficient. Common costs shall be shared proportionally to the consumption and to [a second distribution key] of the participating Member States.

EFET suggests: Common costs shall be shared proportionally to the consumption and to [a second distribution key] of the participating Member States **and with a retro-active correction possible if new Member States join.**

The costs of the TSOs to perform the functions under this governance guideline shall be assessed by national NRAs and be recovered, if approved as an efficient cost level by the NRA, via the national tariffs. The Member States' share of the common costs and the national implementation costs of NEMO may be recovered via TSO grid tariffs or NEMO trading fees. The NRA decides for the amount to be considered in the TSO grid tariffs and **the remaining costs are to be covered via NEMO trading fees.** When deciding on the remuneration, NRAs will take into account **the market situation of NEMOs** and shall coordinate with other NRAs to avoid market distortions.

EFET comment: If costs are to be charged out through power exchange fees, exchanges will be disadvantaged. There will tend to be a disincentive to exchange based trading in favour of OTC (brokered) transactions. The market would benefit from the service costs being paid for via grid tariffs.

EFET comment: Please clarify the meaning of “market situation of the NEMOs”.

Third country participation

The European single price coupling and single intra-day market may be open to third countries adjacent to countries which are coupled on the condition that the applicable national law implements **the main provisions of the EU electricity market legislation**. The coupling of third countries shall be decided by the European Commission based on assessment by ACER. The rights and responsibilities of third country NEMOs, MCOs and TSOs joining the single price coupling shall be consistent with the functioning of the single price coupling and single intra-day market system implemented at the European level. All aspects involving ACER according to this guideline are to be **bilaterally agreed between ACER and the relevant authorities of third countries**.

EFET comment: Specify which “main provisions of the EU electricity market legislation” the Guideline refers to.

EFET comment: We remain unsure how far ACER has the legal authority to conclude bilateral agreements with third country authorities.

Committees

In order to ensure proper functioning of day-to-day operations and further development of the European single price coupling and single intra-day market system, three committees will be established.

Operational committee for single price coupling and single intra-day market

TSOs and NEMOs shall establish an operational committee with the tasks outlined in this article. [Do day-ahead and intra-day need separate committees?]

EFET suggests: Separate committees should deal with day-ahead market coupling and the intraday market.

The number of Members in the operational committee shall be [number] representatives nominated by TSOs and [number] nominated by NEMOs. Such nominations shall ensure a balanced representation, with participation of all involved regions, taking into account [criteria]. The operational committee shall not have more than 15 members in total. Additionally, the European Commission and ACER may participate with one representative each as observer and NRAs with two observers.

The operational committee shall:

- a) Propose based on this Governance Guideline, a framework agreement for the relations between NEMOs, MCOs and TSOs involved in single price coupling and single intra-day market. All parties of the agreement shall be entitled to provide their opinions to this proposal. This proposal is subject to an opinion of the ACER and approval by the European Commission. This proposal shall accommodate NEMOs which are governed by licenses or detailed national regulation giving these operators the same rights as the other NEMOs when it can be ensured that the obligations

incurring from the framework agreement are implemented through licenses or detailed national regulation. [this provision needs further elaboration]

EFET comment: We agree that the provision needs further elaboration: the ACER opinion process should include the possibility of a market consultation. In addition, the text should make sure that changes in national regulations would not block the overall process.

- b) Establish and maintain day-to-day single price coupling and single intra-day market operational rules and procedures,

EFET suggests: Modify point b):

- b) Establish and maintain day-to-day single price coupling and single intra-day market operational rules and procedures, subject to a market consultation including a final approval from market stakeholders in the stakeholder committee, with due respect to implementation acceptable timelines for the market**
- c) identify need for developing single price coupling and single intra-day market operational rules and procedures and propose accordant changes,

EFET suggests: Modify point c):

- c) identify need for developing single price coupling and single intra-day market operational rules and procedures and propose accordant changes, subject to a market consultation including a final approval from representatives of market participants in the stakeholder committee, with due respect to implementation of acceptable timelines for the market**
- d) ensure proper maintenance of the related documentation material,
- e) propose consistent European procedures including test procedures, in accordance with local procedures, report conflicts and need for change and document these procedures,
- f) coordinate regular publishing of information to stakeholders and communicating information to authorities, including algorithm design, market information, changes, developments, achievements of the single price coupling and the single intra-day market and ensure proper and timely communication in the case of incidents,
- g) monitor common costs associated with single price coupling and single intra-day market as specified in the capacity allocation and congestion management network code [reference] and prepare regular report on common costs for ACER and NRAs,
- h) monitor the processes for the correct operation of the single price coupling and single intra-day market system in compliance with the rules, including proper documentation and change management,
- i) assess proposed changes in the price coupling system and algorithm with respect to operational performance, compliance with prescribed requirements and costs incurred,
- j) monitor backup procedures to manage day-to-day unforeseen incidents or extreme situations, including procedures to go to fall-back,
- k) In case of incidents, the committee shall coordinate the investigations and propose remedial changes in the algorithm, the single price coupling and single intra-day market system or the procedures.

EFET suggests: Modify point k:

k) In case of incidents, the committee shall coordinate the investigations, **perform the necessary consultations with market participants** and propose remedial changes in the algorithm, the single price coupling and single intra-day market system or the procedures, **including fall-back and back-up.**

l) Establish the NEMO committee and the stakeholder committee.

Each member of the operational committee shall bear its own costs.

NEMO committee for coordination

A NEMO committee for co-ordinating the co-operation between NEMOs and MCOs shall be established. All NEMOs and MCOs shall be represented in the committee. NEMO committee shall be a sub-committee of the operational committee.

The NEMO-committee has the following tasks:

a) Set detailed NEMO-related single price coupling and single intra-day market participation criteria,

EFET suggests: Modify point a):

a) Set detailed NEMO-related single price coupling and single intra-day market participation criteria, **subject to a market consultation including a final approval from market stakeholders in the stakeholder committee, with due respect to implementation of acceptable timelines for the market**

b) Establish and maintain a NEMO cooperation agreement between all NEMOs to establish the joint governance, delivery and operation of the joint NEMO obligations including the MCOs,

c) establish common requirements for any separate service agreements for NEMOs wishing to access single price coupling and single intra-day market via another NEMO. Fair and non-discriminatory rights and obligations shall apply to all NEMOs without regards if they participate on single price coupling and single intra-day market directly or via another NEMO.

d) identify the needs for development and changes of the single price coupling and single intra-day market operational rules and procedures.

EFET suggests: Modify point d):

d) identify the needs for development and changes of the single price coupling and single intra-day market operational rules and procedures, **subject to a market consultation including a final approval from representatives of market participants in the stakeholder committee, with due respect to implementation of acceptable timelines for the market**

In case of dispute between the NEMOs in the NEMO committee, NEMOs shall solicit ACER for a regulatory opinion on the dispute.

Stakeholder committee for single price coupling and single intra-day market

The operational committee shall be responsible for establishing a stakeholder committee.

The number of members in the stakeholder committee shall be [number] representatives from TSOs, [number] from NEMOs and MCOs, [number] from traders, [number] from generation companies, [number] from industrial consumers, [number] from small supply companies, one from consumer organisations, one from European Commission, one from ACER and two from NRAs.

The task of the stakeholder committee is to discuss and give advice regarding day-to-day operation and development of single price coupling and single intra-day market.

EFET suggests: The task of the stakeholder committee is to discuss and give advice regarding day-to-day operation and development of single price coupling and single intra-day market, **and to validate the outcome of consultations before they go to the further steps of implementation.**

The stakeholder committee shall meet at least twice per year.

Common tasks of each committee

Each committee shall draft its rules of procedures including duration of memberships. These rules of procedures are subject to an opinion of the ACER and approval by the European Commission. The rules of procedures shall establish the voting rights for decisions and a dispute resolution mechanism. [to be elaborated, any decision shall be taken by simple majority voting with each member having one vote?]

The committees shall ensure a high level of transparency and make publicly available relevant documents including rules of procedures, terms of references, day-to-day operational rules and procedures. Each committee shall publish summary minutes and relevant documents of the committee meetings. [Documents containing confidential information to be elaborated]

Liability

The NEMOs, MCOs and TSOs in the single price coupling and single intra-day market shall agree on the liability of each party regarding damage caused from failure to execute its assigned tasks and responsibilities. This agreement is subject to an opinion of the ACER and approval by the European Commission. It shall be in line with the following liability principles:

EFET suggests:

The NEMOs, MCOs and TSOs in the single price coupling and single intra-day market shall agree on the liability of each party **to each other and to third parties (in the latter case whether joint or several)** regarding damage caused from failure to execute its assigned tasks and responsibilities. **Any such** agreement is subject to an opinion of

ACER and approval by the European Commission. It shall be in line with the following liability principles:

- a) Each party shall be liable for the tasks and responsibilities they have been assigned under this guideline or the [reference to capacity allocation and congestion management network code].
- b) No party shall be held liable for consequential losses resulting from failure to execute its assigned responsibilities.

EFET suggest:

- b) No party shall be held liable for consequential losses resulting from failure to execute its assigned responsibilities (**subject to the clarification that the direct commercial losses of market participants attributable to a market coupling or continuous trading platform/ system failure shall not be considered merely consequential**).

- c) The liability shall be enforceable.

EFET suggest:

- c) Liability shall be enforceable **and not excused by reference to national laws or extraneous contracts with third parties**.

Approval of rules

In accordance with Article 37(6) of Directive 2009/72/EC, for the purpose of implicit allocation of cross-zonal capacity, NRAs shall be responsible for fixing, or approving sufficiently in advance of their entry into force, the terms and conditions for access to cross-border infrastructure, including the algorithm and the procedures for the allocation of capacity and congestion management for single price coupling and single intra-day market.

In accordance with Article 37(9) of Directive 2009/72/EC, for the purpose of implicit allocation of cross-zonal capacity, NEMOs, MCOs and TSOs shall submit the terms and conditions for implicit access to cross-zonal capacity for single price coupling and for the single intra-day market, including procedures for the allocation of capacity and congestion management and day-to-day operational rules and procedures referred to in [reference] to the NRAs. Regulatory authorities may require amendment to those rules.

To facilitate development of identical terms and conditions for implicit access to cross-zonal capacity including procedures for the allocation of capacity and congestion management, NEMOs, MCOs and TSOs shall ensure the development and amendment process is coordinated.

Regulatory authorities shall ensure that the rules submitted for implicit allocation are in line with the requirements set out in [reference] and further the objectives set out in [reference].

For the purpose of single price coupling and single intra-day market, regulatory authorities shall ensure that the approved terms and conditions for access to cross-border infrastructure, including procedures for the allocation of capacity and congestion management, are identical. To facilitate an efficient approval process the relevant regulatory authorities shall ensure that approval is sufficiently coordinated.

Monitoring

In accordance with Regulation 713/2009, ACER shall monitor and promote regional cooperation between NEMOs, and TSOs and cooperation of NRAs in the development and amendment and approval of rules for implicit allocation of cross-zonal capacity in the single price coupling and in the single intra-day market. ACER shall take due account of the outcome of such cooperation when formulating its opinions, recommendations and decisions. Where ACER considers that binding rules on such cooperation are required, it shall make appropriate recommendations to the Commission. NEMOs and TSOs shall provide ACER with the information necessary for monitoring of operation.

NRAs shall monitor the continued compliance of NEMOs and TSOs with the requirements of [reference]. The Operational committee shall report to regulatory authorities at least on an annual basis on the operational performance of the single price coupling and single intra-day market.

In accordance with Article 22 of Regulation 714/2009 Member States shall lay down rules on penalties applicable to infringements of the requirements of [reference] by NEMOs.

Dispute settlement

For the purpose of implicit allocation single price coupling or intraday market, in case of a dispute between regulatory authorities, in relation to the terms and conditions for access to cross-border infrastructure, including procedures for the allocation of capacity and congestion management, the dispute shall be formally notified to ACER. Dispute resolution process is set out in regulation 713/2009.